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REPORT NO. 2B

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TO: THE LEGISLATIVE COUNCIL OF MARYLAND

SUBJECT: NATURAL RESOURCES ARTICLE
(TITLES 8 AND 9)

In Report No. 2A, dated June 23, 1972, this Commission submitted to the Legislative Council drafts of Titles 2 and 3 of the Natural Resources Article. With this Report, we submit drafts of Titles 8 and 9, which were approved at the Commission's July 21 meeting.

The drafts of Titles 8 and 9 include all 1972 legislative amendments and additions relevant to the statutory material contained therein. In addition, they incorporate and reflect style and revision decisions the Council's Joint Committee on the Revision of Article 66C has made with reference to other titles of the Natural Resources Article which it considered and approved.

TITLE 8 - WATER AND WATER RESOURCES

Title 8 contains 17 subtitles. It combines statutory material which presently appears in Articles 14B, 66C and 96A of the Code relevant to the subject matter of water and water resources. In the main, the changes made are stylistic and organizational. However, the Commission does note the following items for the Council's particular attention.

(a) Unlike other titles of the Natural Resources Article, Title 8 has a definition of the word "person" applicable throughout the title unless clearly provided otherwise. It appears as section 8-101(f). The definition is based on an analysis of several present statutory provisions which appear throughout the statutory material allocated for inclusion in the title.

(b) Under section 8-513, the Maryland Potomac Water Authority is authorized to receive funds from the State and political subdivisions towards its obligations and duties. As the section presently reads, the State may lend the Authority money without restriction. The question is raised whether such authority complies with Article III section 34 of the Maryland Constitution which establishes limitations on State loans.

(c) In section 8-601, the present definition of the term "aquifer" is deleted from subtitle 6. A reading of the relevant present statutes shows the word does not appear to be used.

(d) Section 8-712(f) states that the Department of Natural Resources shall issue a registration card for every vessel which is issued a certificate of boat number. This section creates confusion because it suggests two separate documents - a certificate of number and a registration card - are issued and exist. In fact, the department issues only one document, a pocket sized certificate of boat number.

A similar problem appears with reference to section 8-703(b). This section authorizes the department to take possession of any certificate of number, title, permit, license or registration the department issues after it expires, is revoked, etc. The draft of section 8-703(b) uses the term "document" in lieu of those

enumerated above in order to avoid any confusion. At present the department does not issue any permit or registration. Presumably the reference to license only means a manufacturer's or dealer's license since that is the only license document the department issues.

In order to avoid further confusion as to the types of documents specified by statute and those which are actually issued, the provision of these sections and the department's administration of them should be harmonized. However, the Commission felt that this task includes policy considerations, and could best be performed by members of the General Assembly.

(e) Subtitle 11 deals with the authority and procedures for extracting sand, gravel, rare earth, and minerals from the Chesapeake Bay and Potomac River. These provisions presently appear as section 13B, and 22-30 of Article 66C of the Code, enacted by chapter 574, Acts of 1951. They appear to be in obvious conflict with the subsequent enacted wetlands statutes, Article 66C, sections 718-730, chapter 241, Acts of 1970. Sand, gravel, rare earth, and minerals of the Chesapeake Bay and Potomac river seem to fall within the definition of wetland in section 719. The question is raised whether the provisions of subtitle 11 should be retained, repealed, or clearly made subject to the wetlands statutes.

(f) Section 8-1306 creates a lien against the property of an owner or operator of sewage disposal plant and in favor of the county or city which expends certain funds. An identical provision also appears in section 8-1405. This is similar to certain provisions found in Title 3, subtitle 1. In order to protect any innocent third party purchaser of the land, notice of such a lien should be required to be made. Such a change was made by the joint Committee

with respect to the similar provisions in Title 3, subtitle 1, see sections 3-108(c); 3-109(b)(2) and (c)(3); and 3-124.1.

(g) Section 8-1311 protects a person with a riparian right to use water in the Severn River watershed for agricultural purposes, among other things, from any condemnation by the State or local government or any of its agencies. It appears this refers to every type of condemnation. The question is raised whether exception from any type of condemnation is intended or desirable.

(h) In subtitle 15 concerning the Patuxent River watershed, in section 8-1501(b), the definition of "county commissioners" is changed to "appropriate county governing body". It is defined to mean the county commissioners of any nonchartered county or the county council. The present law defines "county commissioners" as interchangeable with "county council" in a chartered county. The Commission's new definition takes the same approach as the present law but merely avoids using "county commissioners" as the interchangeable word throughout the statutes to avoid confusion by its normal meaning. However, the apparent ambiguity in the statutory definition exists. A county council in a chartered county does not necessarily perform the same functions as county commissioners. These functions are divided between the county council and the county executive. By using the definition in the present statute or the revised one, there is no clear indication, in chartered county, whether the county council or the county executive shall perform the functions and have the powers under the provisions of subtitle 15. Unless the General Assembly makes some changes the assignment and function will presumably take place on the county level.

TITLE 9 - WETLANDS AND RIPARIAN RIGHTS

Title 9 contains 5 subtitles entitled "In general," "State Wetlands," "Private Wetlands," "Lands formed by Channel Excavation in Sinepuxent, Isle of Wight and Chincoteague Bays," and "Penalties, fines and severability." The provisions allocated to this title presently appear as Article 66C, sections 718-730 of the Code. While the changes made are largely stylistic, the following points are noted for special attention.

(a) Section 9-101(c) contains a new definition of "circuit court" applicable to this title and intended to clarify the appeal procedures provided for in section 9-305 and 9-308(b). The sections concern appeals to a circuit court for the county where the land lies but give no indication in which court in Baltimore City the appeal is prosecuted if the land lies in Baltimore City. The Commission has selected the Baltimore City Court to hear the appeal because a jury trial is authorized in this court and administrative appeals are heard in this tribunal.

(b) Section 9-305 provides for judicial review of any administrative appeal by appeal to the circuit court and to the Court of Appeals. However, section 9-308 provides for judicial review of a decision of the Board of Review by appeal only to the Circuit Court. The question is raised whether a provision should be added to section 9-308 for a further right of appeal to the Court of Appeals as presently exists in section 9-305.

(c) Section 9-310 authorizes courts to restrain any violation under subtitle 3 of the title. Under the present statute, Article 66C, section 730, the Superior Court of Baltimore City is given this equity jurisdiction. The Commission proposes vesting this

jurisdiction in the Circuit Court or Circuit Court No. 2 for Baltimore City because the Superior Court of Baltimore City normally does not exercise equity jurisdiction.

CONCLUSION

Within the three months remaining before the 1973 session of the General Assembly convenes, the Commission will submit the remaining two titles of the Natural Resources Article, Title 4 - Fish and Fisheries and Title 10 - Wildlife.

Respectfully submitted,

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Director

WHA:pj
Distribution A-3

